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of the statute of limitations. The statute in such cases makes no exception, and in a court of law the limitation runs from the date of settlement and payment; but in a court of equity, when the plaintiff is without fault, the statute will be held to run only from the discovery of the fraud or mistake. To avail of this equitable jurisdiction, however, the plaintiff must have acted in good faith and with reasonable caution and diligence.

Appeal from Circuit Court of Shenandoah county. Affirmed.

A. C. Stickley, R. T. Barton, M. L. Walton, for the appellant.
C. B. Guyer, F. S. Tavenner, for the appellee.

CITY OF LYNCHBURG *v.* MITCHELL et al.

Richmond, November 21, 1912.

[7 Va. App. 179.]

1. Actions—Right to Bring—Purchaser—Damages—Assignment.—Purchasers of property, who have acquired by assignment all the rights of their grantors to damages for diversion of water from the property prior to their purchase, have a right to recover damages resulting from the diversion, although the price paid by them for the property was much less than its value before the diversion. It is immaterial to the defendant whether the assignee of such damages is the purchaser of the land, or it was purchased by some other person, or still remains the property of the assignor.

2. Damages—Excessiveness.—Where there was evidence to the effect that the value of property, before the diversion of water for which damages were asked, was \$10,000 to \$15,000, that by the diversion it was reduced in value from one-half to three-fourth, that the mill upon the property required nearly eight millions of gallons of water daily to run it at its full capacity, that there were diverted between three and four million gallons daily, the pipes having a capacity of eight millions daily, etc.: Held, that a verdict of \$5,000 for diversion of the water was not excessive.

Error to Circuit Court of Amherst county. Affirmed.

N. C. Manson, Jr., for the plaintiff in error.

Aubrey E. Strode, Volney E. Howard, for the defendants in error.

McGUIRE et als. *v.* BROWN, GUARDIAN, et als.

Richmond, November 21, 1912.

[7 Va. App. 183.]

1. Contracts—Construction—Intention.—In the construction of contracts the intention of the parties should be considered and given

effect. To arrive at this intention regard is to be had to the situation of the parties, the subject matter of the agreement, and the object which the parties intended to be accomplished. If consistent with the tenor of the agreement, a construction which would be unreasonable or unequal should be avoided, and that construction favored which is most obviously just and in accordance with the presumed intention of the parties.

2. Idem—Assignment—Personal Relations.—Where a husband and wife executed an agreement under seal, which recited that they bound themselves to pay to B. one-half of the money received for their one-thirteenth interest in two tracts of land, the price at which sale was to be agreed upon between them and B., and B. assigned his interest in the contract, but no sale was made or attempted during the life of either the wife, who was the owner of the land, or the assignee, a period of over seventeen years: Held, that the agreement established personal relations of trust and confidence between the parties thereto as to the disposition of the land, and therefore B. was without power or authority to assign the agreement to any one; and that the assignee took no interest in the land or any timber thereon, which he could have asserted against the owner in her lifetime, or against her estate after her death, or which could pass to his heirs or distributees.

Appeal from Circuit Court of Tazewell county. Affirmed.

Greever & Gillespie, for the appellants.

Henry & Graham, E. R. Boyd, for the appellees.